

GEORGIANNA A. FISCHER ET AL.

IBLA 73-96, 73-107, 73-173, 73-246

Decided March 11, 1974

Appeals from Bureau of Land Management decisions rejecting Native Allotment applications F 14608 etc., covering lands in Naval Petroleum Reserve No. 4.

Affirmed.

Alaska: Native Allotments

Lands in Naval Petroleum Reserve No. 4 are not available for Alaska native allotments.

APPEARANCES: William D. Rives, Esq., Davis, Wright, Todd, Riese & Jones, Seattle, Washington, for appellants; Loretta C. Douglas, Esq., and Thomas Hine, Esq., Office of the Solicitor, Department of the Interior, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

This is a consolidated appeal from Bureau of Land Management (BLM) decisions rejecting Alaska Native allotment applications, listed in the Appendix hereof, because the lands involved are within Naval Petroleum Reserve No. 4 (Pet. 4) and not open for native allotment purposes.

Appellants contend that despite the reservation of oil and gas for naval petroleum purposes under the jurisdiction of the Secretary of the Navy, the lands remained open to native applications and other appropriations under jurisdiction of the Secretary of the Interior. They assert the lands have been occupied and used from historical times, that the lands have ever been open to native use and that Congress expressly authorized disposition of the surface for native purposes, to wit, for native villages, including native allotment purposes.

BLM asserts that the Secretary of the Navy has exclusive jurisdiction over Pet. 4 so the Secretary of the Interior is powerless to grant allotments therein, that the lands have been closed at all times since Pet. 4 was created, and that appellants never gained allotment rights through ancestral, historical or aboriginal use.

The Native Allotment Act as originally enacted May 17, 1906, 34 Stat. 197, reads in pertinent part as follows:

* * * that the Secretary of the Interior is hereby authorized and empowered, in his discretion and under such rules as he may prescribe, to allot not to exceed one hundred and sixty acres of nonmineral land in the district of Alaska * * *. Any person qualified for an allotment as aforesaid shall have the preference right to secure by allotment the nonmineral land occupied by him not exceeding one hundred and sixty acres.

The Act afforded "a preference right to secure by allotment the nonmineral land occupied" by the native under the rules promulgated by the Secretary. By itself, although the Act afforded a preference right, it did not vest a right to an allotment. If appellants fully complied with the regulations promulgated by the Secretary on lands open to allotment, a right to allotment was earned and issuance of allotment would be directed. Larry W. Dirks, Sr., 14 IBLA 401 (1974).

Turning to the lands involved in these appeals, we find that E.O. 3797-A of February 23, 1923, established Naval Petroleum Reserve No. 4, on an area of some 35,984 square miles in northwestern Alaska, and provided the reservation was established only for oil and gas. All of these lands in Pet. 4 were presumptively valuable for oil and gas. Later, PLO 82 of February 4, 1943, encompassing all the area of Pet. 4 and surrounding lands, withdrew the entire area from all forms of appropriation under the public land laws, including the mining and mineral leasing laws. PLO 2215 of December 8, 1960, revoked PLO 82 and opened some of the previously withdrawn lands to entry, but the Order expressly stated that no lands in Pet. 4 were affected by the revocation, as all land in Pet. 4 was under jurisdiction of the Secretary of the Navy, 10 U.S.C. § 7421 *et seq.* (1970). This Department has held that from the date of establishment of Pet. 4 in 1923 none of the lands therein have been open to any appropriation, including native allotments. E.g., Elsie May Pikok Crow, 3 IBLA 114 (1971).

The Native Allotment Act was amended by the Act of August 2, 1956, 70 Stat. 954, to permit allotments on vacant, unappropriated and unreserved lands valuable for coal, oil or gas deposits, and also to require a satisfactory proof of substantially continuous use and occupancy for five years before receiving the allotment. This amendment, however, did not change the status of lands within Pet. 4, and so affords no relief to these appellants.

The statute, 10 U.S.C. § 7421 (1970) (codified by Act of August 10, 1956, and derived from Act of June 4, 1920, 41 Stat. 813), is explicit that the lands embraced within Pet. 4 are under administrative jurisdiction of the Navy. A Memorandum of Understanding approved by the Secretaries of the Navy and of the Interior, (April 2, 1957), details the surface jurisdiction of BLM. It does not authorize alienation of surface or subsurface by the Department of the Interior. But the Bureau of Land Management maintains management authority consistent with 10 U.S.C. § 7431(2). See Terza Hopson, 3 IBLA 134 (1971).

Appellants argue that when Congress enacted section 14 of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. § 1613, which authorized surface disposal of lands in Pet. 4 to village corporations, it authorized surface entry under the Allotment Act. We cannot agree. Rather than authorizing allotments Congress recognized that the lands were withdrawn and, absent its specific authorization for disposal, the village corporations would lose their rights to selection. Congress recognized that the Secretary could not convey or otherwise alienate the lands within the reserve without special authorization. Furthermore, Congress did not retroactively validate prior non-recognizable and non-existing native rights under the Allotment Act. By section 18, 43 U.S.C. § 1617(a), it repealed the Allotment Act. After December 18, 1971, the natives were prohibited from initiating any claims under the now-repealed Allotment Act.

We dismiss the argument that aboriginal use and continued use and occupancy by their forebears from historical times entitles appellants to allotments. In Larry W. Dirks, Sr., *supra*, we held that the Alaska Native Allotment Act authorizes a non-alienable, nontransferable, and noninheritable right of selection which terminates upon death. Only where an allotment selection has been made and the applicant fully complies with the law and regulations and accomplishes all that is required to be done in his lifetime is the right to allotment earned and an inheritable property right established. In Dirks we pointed out that an Alaska Native Allotment may be made only upon vacant, unappropriated, unreserved public domain lands and where all requirements were complied with prior to withdrawal the allotment would issue. We specifically held that a native who applies for withdrawn lands must show that he himself complied with the law prior to the date of withdrawal and that he may not avail himself of any period of use and occupancy of his ancestors to establish a right to allotment.

Attention is directed to the Secretarial Directive of October 18, 1973, concerning the adjudication of pending Alaska native allotment applications. In pertinent part it directs that:

Vacant, unappropriated and unreserved land in Alaska is available for allotment under the Native Allotment Act. With respect to reserved withdrawn land, if a native has completed the five-year period of statutory substantial use and occupancy prior to the effective date of the withdrawal or reservation, the withdrawal may be revoked and the allotment granted.

* * * * *

1. Where a native has initiated and completed substantial use and occupancy of the land for five years prior to the withdrawal or reservation, the allotment may be granted even though the land is still withdrawn at the time of application.
2. Where a native has not completed the five-year period of statutory use and occupancy of lands prior to the effective date of a withdrawal or reservation of the lands, the allotment application should be rejected.

Review of the records clearly shows that none of the appellants had completed the five-year statutory period of substantial use and occupancy prior to the creation of Pet. 4 in 1923 (or even prior to PLO 82, February 4, 1943). At no time since 1923 have the lands been in the category of lands open to the initiation of preference rights to allotments. As noted above, no rights may now be initiated because of the repeal of the Native Allotment Act.

In view of our conclusions no useful purpose would be served by granting the request by the appellants to make oral argument. Accordingly, the request for oral argument is denied.

Therefore, pursuant to the authority delegated by the Secretary of the Interior to the Board of Land Appeals, 43 CFR 4.1, the decisions below are affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Martin Ritvo
Administrative Judge

Edward W. Stuebing
Administrative Judge

APPENDIX

<u>IBLA</u>	<u>Names</u>	<u>Serial Numbers</u>
73-96	Georgianna A. Fischer	F 14608
	Loretta Kenton	F 14619
	Mamie Matumeak	F 14623
73-97	Ben K. Ahmaogak	F 14459
	Chares Sakeagak	F 14478
	Kenneth Brower	F 14581
	Jonathan Aiken	F 14591
	Mabel Aiken	F 14592
	Bailey Aishanna	F 14593
	Eunice Aishanna	F 14594
	Abel Akpik	F 14597
	Simeon Akpik	F 14598
	Nimrod Bodfish	F 14601
	Lillian Elavgak Cumber	F 14604
	Bertha A. Leavitt	F 14621
	Jonah Leavitt	F 14622
	George Olemaun	F 14633
73-107	Fannie Ahmaogak	F 14309
	Frederick Ahmaogak	F 14310
	Ray Ahmaogak	F 14311
	James Kagak	F 14312
	Helen J. Peetok	F 14313
	Rossmann E. Peetok	F 14314
	Florence Ahmaogak	F 14338
	Frankie A. Ahyoovik	F 14339
	Oliver J. Angashuk	F 14341
	Warner K. Asogak	F 14342
	Beverly Aveoganna	F 14344
	Jim A. Aveoganna	F 14345
	David O. Kagak	F 14348
	Charles G. Nayakik	F 14349
	Marietta Nayakik	F 14350
	Moses Nayakik	F 14351
	Leo A. Panik	F 14354
	Felton A. Segevan	F 14359
	David D. Bodfish, Sr.	F 14763
	Emily S. Bodfish	F 14764
	Jack A. Ekak	F 14775
	Abraham Kagak	F 14792
	Edith T. Negovanna	F 14801
	Mabel Bodfish	F 15260
	Wayne Bodfish	F 15261
	Samuel Driggs	F 15262
	Bernice Tagarook	F 15264
	Peter V. Tagarook	F 15265

	Amos Agnasaga	F 15470
	Johnny Ahngasuk	F 13492
	Margaret Ahngasuk	F 13493
	Frank Akpik	F 13494
	Abraham Kippi	F 13501
	Peter Kippi	F 13502
	Paul Matumeak	F 13504
	Edward Nukapigak	F 13515
	Eugene Brower	F 13565
	Nathaniel Neakok	F 13577
	Eunice Brower Scheuring	F 13582
	Robert Brower, Jr.	F 14466
	Annie Brower	F 14602
	Ronald Brower	F 14603
	Brenda T. Itta	F 14611
	Edward S. Itta	F 14613
	William Kaleak	F 14618
	Betty Nashanik	F 14625
	Joseph Nashanik	F 14626
	John Nayukok	F 14628
	Lucy Neakok	F 14630
	Nate Olemaun, Jr.	F 14635
	Calvin Panigeo	F 14636
	Wyman Panigeo	F 14637
	Carrie Peter	F 14638
	Riggs Peter	F 14639
	Tommy Pikok	F 14640
	Morgan P. Solomon	F 14642
	Phillip A. Teerik, Sr.	F 14644
	Dorcas Watson	F 14645
	Harry Kaleak	F 14647
	Zechariah Ahmakak	F 15486
	Marjorie Ahnupkana	F 15487
	Bernice Ahtuanguaruak	F 15488
	Wilbur Ahtuanguaruak	F 15489
	Marshall Ahvakana	F 15490
	Mattie Ahvakana	F 15491
	Wesley Aiken	F 15493
	Evelyn Beal	F 15495
73-173	Norman Leavitt	F 13503
	Paul Tazruk	F 13518
	Samuel Ekosik	F 14605
	Alfred Hopson, Jr.	F 14609
	Warren Matumeak	F 14624

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73-246 Thomas Brower, Jr.
 Annie Allen
 Jim T. Allen
 Neil Allen

F 13512
F 13833
F 13834
F 13835

15 IBLA 85

